

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

FRANCIS H. GEORGE,

Petitioner,

v.

CIVIL ACTION NO. 5:10-cv-00336

DAVID BERKEBILE

Respondent.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed Petitioner's Petition For Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Docket 1].

By Standing Order [Docket 2] entered on March 16, 2010, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On September 7, 2010, the Magistrate Judge submitted Proposed Findings and Recommendation ("PF&R") [Docket 33] wherein it is recommended that this Court dismiss the Petitioner's Petition For Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241, deny Petitioner's Motions for Temporary Injunctions [Docket 12 and 13] and remove this matter from the Court's docket.

The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of de novo review and Petitioner's right to appeal this

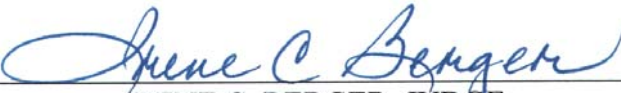
Court's order. *See Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F. 2d 91, 94 (4th Cir. 1984). Objections to the PF&R were due by September 24, 2010. On September 27, 2010, Petitioner filed his Request for Enlargement of Time [Docket 36], wherein he requests an additional 63 days to respond to the PF&R. However, Petitioner failed to request an extension of time prior to the deadline of September 24, 2010, and, more importantly, Petitioner was released from federal custody on September 10, 2010, thus rendering this habeas action moot.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation* [Docket 33]. The Court **ORDERS** that Petitioner's Petition For Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 [Docket 1] be **DISMISSED** and his Motions for Temporary Injunctions [Docket 12 and 13], Emergency Motion For Immediate Pre-Release Placement for Failure to Show Cause [Docket 28], and his Request for Enlargement of Time [Docket 36] be **DENIED**. The Court further **ORDERS** that this matter be **REMOVED** from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **ORDERS** that a certificate of appealability be **DENIED**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER:        October 1, 2010

  
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IRENE C. BERGER, JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA